

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-95-3867; FR-3774-N-01]

Advance Notice of Fiscal Year (FY) 1995 Funding for Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Advance notice of FY 1995 funding for CIAP.

SUMMARY: This Notice provides advance information to Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 public housing units and, therefore, are eligible to apply and compete for CIAP funds, of the requirements for applying for FY 1995 CIAP funding. Therefore, the CIAP eligible HA may start now to plan and develop its FY 1995 CIAP application. HAs with 250 or more public housing units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP) and are not eligible to apply for CIAP funds.

DATES: This Advance Notice does not establish an application deadline date. A Notice of Fund Availability (NOFA) will be published at a later date and will establish an application deadline date, as well as set forth the amount of funds available for the CIAP.

FOR FURTHER INFORMATION CONTACT:

William J. Flood, Director, Modernization Division, Office of Distressed and Troubled Housing Recovery, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4134, Washington, DC 20410. Telephone (202) 708-1640. (This is not a toll-free number).

IHAs may contact Dominic A. Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., B-133, Washington, DC 20410. Telephone (202) 755-0032. (This is not a toll-free number).

Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4595. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Purpose and Substantive Description

(a) *Authority.* Sec. 14, United States Housing Act of 1937 (42 U.S.C. 14371); Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C.

3535(d)). An interim rule revising the CIAP regulation, 24 CFR Part 968, Subparts A and B, for PHAs and 24 CFR Part 905, Subpart I, for IHAs, and streamlining the program was published on March 15, 1993. A final rule will be published shortly.

(b) *Program Highlights.*

(1) *Departmental Priority.* Improving Public and Indian Housing is one of the Department's major priorities.

Accordingly, a review has been made of the entire Public and Indian Housing Program. Specifically, the Department is very concerned about several aspects of the Modernization Program, as follows:

(i) *Design.* When identifying physical improvement needs to meet the modernization standards, HAs are encouraged to consider design which supports the integration of public housing into the broader community. Although high priority needs, such as those related to health and safety, vacant/substandard units, structural or system integrity, and compliance with statutory, regulatory or court-ordered deadlines, will receive funding priority, HAs should plan their modernization in a way which promotes good design, but maintains the modest nature of public housing. The HA should pay particular attention to design, which is sensitive to traditional cultural values, and be receptive to creative, but cost-effective approaches suggested by architects, residents, HA staff, and other local entities. Such approaches may complement the planning for basic rehabilitation needs. It should be noted that there will be no increase in operating subsidy due to improved design promoting the blend of public housing into the surrounding neighborhood or to additional amenities improving the quality of life.

(ii) *Expediting the Program.* HAs are reminded that they are expected to obligate all funds within two years and to expend all funds within three years of program approval (Annual Contributions Contract (ACC) Amendment execution) unless a longer project implementation schedule is approved by the Field Office. If the HA does not obligate approved funds in a timely manner, the Department will recapture the funds unless there are clear, valid reasons for not meeting the obligation deadline; i.e., delays which are outside of the HA's control.

(iii) *Resident Involvement and Economic Uplift.* HAs are required to explore and implement through all feasible means the involvement of residents, including duly-elected resident councils, in every aspect of the CIAP, from planning through implementation. HAs shall use the

provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended (Section 3) to the maximum feasible extent. HAs are encouraged to seek ways to employ Section 3 residents in all aspects of the CIAP's operation and to develop means to promote contracting opportunities for businesses in Section 3 areas. Refer to 24 CFR 85.36(e) regarding the provision of such opportunities.

(iv) *Elimination of Vacant Units.*

Although the Department has a vacancy reduction effort specifically aimed at reducing vacancies, HAs are encouraged to apply for CIAP funds to address vacant units where the work does not involve routine maintenance, but will result in reoccupancy.

(2) *Relationship to Technical Review Factors.* The Departmental goal of improving Public and Indian Housing is reflected in the technical review factors, set forth in section IV(c)(5) of this Notice, on which the Field Office scores each HA's CIAP Application. Based on the HA's total score, the Field Office then ranks each HA to determine selection for Joint Review. The technical review factors include the following Departmental initiatives to improve Public and Indian Housing:

- (i) Restoration of vacant units to occupancy;
- (ii) Resident capacity-building, including opportunities for resident management;
- (iii) Economic development, through job training and employment opportunities for residents and contracting opportunities for Section 3 businesses;
- (iv) Drug elimination initiatives; and
- (v) Partnership with local government.

II. Allocation Amounts

The Department will publish separately a NOFA in the **Federal Register**, explaining the FY 1995 appropriation, minus any FY 1995 set-asides and reductions, plus any carry-over from FY 1994. The NOFA also will explain the allocation between the CGP and the CIAP, and within the CIAP, the allocation between Public Housing and Indian Housing and the allocation to each Field Office/Office of Native Americans Program (ONAP). The Field Office Public Housing Director or the ONAP Administrator shall have authority to make Joint Review selections and CIAP funding decisions.

III. Application Preparation and Submission by HA

(a) *Planning.* In preparing its CIAP Application, the HA is encouraged to assess all its physical and management

improvement needs. Physical improvement needs should be reviewed against the modernization standards, as set forth in HUD Handbook 7485.2, as revised, and any cost-effective energy conservation measures, identified in updated energy audits. The modernization standards include development specific work to ensure the long-term viability of the developments, such as amenities and design changes to promote the integration of low-income housing into the broader community. (See section I(b)(1)(i) of this Notice). In addition, the HA is strongly encouraged to contact the Field Office to discuss its modernization needs and obtain information. The term "Field Office" includes the ONAP.

(b) *Resident Involvement/Local Official Consultation Requirements.*

(1) *Residents/Homebuyers.* The CIAP regulations at §§ 968.220 or 905.624 require the HA to establish a Partnership Process for rental developments which ensures full resident participation in the planning, implementation and monitoring of the modernization program, as follows:

(i) Before submission of the CIAP Application, consultation with residents, resident organization, and resident management corporation (herein referred to as residents) of the development(s) being proposed for modernization and request for resident recommendations;

(ii) Reasonable opportunity for residents, including duly-elected resident councils, to present their views on the proposed modernization and alternatives to it, and full and serious consideration of resident recommendations;

(iii) Written response to residents, including duly-elected resident councils, indicating acceptance or rejection of resident recommendations, consistent with HUD requirements and the HA's own determination of efficiency, economy and need, with a copy to the Field Office at Joint Review;

(iv) After HUD funding decisions, notification to residents of the approval or disapproval and, where requested, provision to residents of a copy of the HUD-approved CIAP budget; and

(v) During implementation, periodic notification to residents of work status and progress and maximum feasible employment of residents in the modernization effort.

(2) *Local Officials.* Before submission of the CIAP Application, consultation with appropriate local officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development,

drug elimination and expenditure of local funds, such as Community Development Block Grant funds.

(c) *Contents of CIAP Application.* Within the established time frame, the HA shall submit the CIAP Application to the Field Office, with a copy to appropriate local/tribal officials. The HA may obtain the necessary forms from the Field Office. The CIAP Application is comprised of the following documents:

(1) *Form HUD-52822, CIAP Application*, in an original and two copies, which includes:

(i) A general description of HA development(s), in priority order, (including the current physical condition, for each development for which the HA is requesting funds, or for all developments in the HA's inventory) and physical and management improvement needs to meet the Secretary's standards in § 968.115 or § 905.603; description of work items required to correct identified deficiencies; and the estimated cost. For example:

Development 1-1: 50 units of low-rent; 25 years old; physical needs are: new roofs; LBP testing; storm windows and doors; and electrical upgrading at estimated cost of \$150,000.

Development 1-2: 40 units of low-rent; 20 years old; physical needs are: physical accessibility of 2 units; kitchen floors; shower/bathtub surrounds; fencing; and exterior lighting at estimated cost of \$90,000.

Development 1-3: 35 units of Turnkey III; 15 years old; physical needs are: physical accessibility of 3 units; and roof insulation at estimated cost of \$50,000.

Development 1-4: 20 units of low-rent; 5 years old; no physical needs; no funding requested.

Note: Refer to Section IV(d)(3) of this Notice regarding the consequences of not including all developments in the CIAP Application, even where there are no known current needs.

(ii) Where funding is being requested for management improvements, an identification of the deficiency, a description of the work required for correction, and estimated cost. *Examples* of management improvements include, but are not limited to the following areas:

(A) the management, financial, and accounting control systems of the HA;

(B) the adequacy and qualifications of personnel employed by the HA in the management and operation of its developments by category of employment; and

(C) the adequacy and efficacy of resident programs and services, resident

and development security, resident selection and eviction, occupancy and vacant unit turnaround, rent collection, routine and preventive maintenance, equal opportunity, and other HA policies and procedures.

(iii) a certification that the HA has met the requirements for consultation with local officials and residents/homebuyers and that all developments included in the application have long term physical and social viability, including prospects for full occupancy. If the HA cannot make this certification with respect to long-term viability, the HA shall attach a narrative, explaining its viability concerns.

(2) *A narrative statement*, in an original and two copies, addressing each of the technical review factors in section IV(c)(5) and, where applicable, the bonus points in section IV(c)(6).

(3) *Form HUD-50071, Certification for Contracts, Grants, Loans and Cooperative Agreements*, in an original only, required of HAs established under State law, applying for grants exceeding \$100,000.

(4) *SF-LLL, Disclosure of Lobbying Activities*, in an original only, required of HAs established under State law, only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers, Members of Congress and their staff regarding specific grants or contracts.

(5) *Form HUD-2880, Applicant/Recipient Update/Disclosure Report*, in an original only, required of HAs established under State law.

(6) *At the option of the HA*, photographs or video cassettes showing the physical condition of the developments.

IV. Application Processing by Field Office

(a) *Completeness Review (Corrections to Deficient Applications).* To be eligible for processing, the CIAP Application must be physically received by the Field Office within the time period specified in the NOFA to be published at a future date, and must be complete, including the signed certification. Immediately after the application deadline, the Field Office shall perform a completeness review to determine whether an application is complete, responsive to the NOFA and acceptable for technical processing.

(1) If either Form HUD-52822, CIAP Application, or the narrative statement on the technical review factors is missing, the HA's application will be considered substantially incomplete and, therefore, ineligible for further

processing. The Field Office shall immediately notify the HA in writing.

(2) If Form HUD-50071, Certification for Contracts, Grants, Loans, and Cooperative Agreements, or SF-LLL, Disclosure of Lobbying Activities, are required, but missing, or Form HUD-2880, Applicant/Recipient Update/Disclosure Form, is missing, or there is a technical mistake, such as no signature on a submitted form or the HA failed to address all of the technical review factors, the Field Office shall immediately notify the HA in writing that the HA has 14 calendar days from the date of HUD's notification to submit or correct the deficiency. This is not additional time to substantially revise the application. Deficiencies which may be corrected at this time are inadvertently omitted documents or clarifications of previously submitted material and other changes which are not of such a nature as to improve the competitive position of the application.

(3) If the HA fails to submit or correct the items within the required time period, the HA's application will be ineligible for further processing. The Field Office shall notify the HA in writing immediately after this occurs.

(b) *Eligibility Review.* After the HA's CIAP Application is determined to be complete and accepted for review, the Field Office eligibility review shall determine if the application is eligible for processing or processing on a reduced scope.

(1) *Eligibility for Processing.* To be eligible for processing:

(i) *HA Eligibility.* HA has fewer than 250 Public and Indian housing units.

(ii) *Development Eligibility.* The development is either a public housing development, including a conveyed Lanham Act or Public Works Administration development, or a Section 23 Leased Housing Bond-Financed project (BFP).

(iii) *Date of Full Availability (DOFA)/Major Reconstruction of Obsolete Projects (MROP) Funding.* Each eligible development for which work is proposed has reached DOFA at the time of CIAP Application submission. In addition, where funded under MROP after FY 1988, the development/building has reached DOFA or where funded during FYs 1986-1988, all MROP funds for the development/building have been expended.

(2) *Eligibility for Processing on Reduced Scope.* Where the following conditions exist, the HA will be reviewed on a reduced scope:

(i) *Section 504 Compliance.* Where the Section 504 needs assessment identified a need for accessible units, the HA was required to make structural

changes to meet that need by July 11, 1992. ("Section 504" refers to Section 504 of the Rehabilitation Act of 1973.) Where the HA has not completed all required structural changes or obtained a time extension from HUD to July 11, 1995, the HA is eligible for processing only for Emergency Modernization or physical work needed to meet Section 504 requirements. Refer to PIH Notice 94-56 (HA), dated August 15, 1994.

(ii) *Lead-Based Paint (LBP) Testing Compliance.* Where the HA has not complied with the statutory requirement to complete LBP testing on all pre-1978 family units, the HA is eligible for processing only for Emergency Modernization or work needed to complete LBP testing.

(iii) *FHEO Compliance.* Where the HA has not complied with Fair Housing and Equal Opportunity (FHEO) requirements as evidenced by an action, finding or determination as described below, unless the HA is implementing a voluntary compliance agreement or settlement agreement designed to correct the area(s) of noncompliance, the HA is eligible for processing only for Emergency Modernization or physical work needed to remedy civil rights deficiencies.

(A) A pending proceeding against the HA based upon a Charge of Discrimination issued under the Fair Housing Act. A Charge of Discrimination is a charge under Section 810(g)(2) of the Fair Housing Act, issued by the Department's General Counsel or legally authorized designee;

(B) A pending civil rights suit against the HA, referred by the Department's General Counsel and instituted by the Department of Justice;

(C) Outstanding HUD findings of HA noncompliance with civil rights statutes and executive orders under § 968.110(a) or § 905.115, or implementing regulations, as a result of formal administrative proceedings, unless the HA is implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance;

(D) A deferral of the processing of applications from the HA imposed by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and HUD implementing regulations (24 CFR 8.57); or

(E) An adjudication of a violation under any of the authorities under § 968.110(a) or § 905.115 in a civil action filed against the HA by a private individual, unless the HA is

implementing a HUD-approved resident selection and assignment plan or compliance agreement designed to correct the area(s) of noncompliance.

(c) *Selection Criteria and Ranking Factors.* After all CIAP Applications are reviewed for eligibility, the Field Office shall categorize the eligible HAs and their developments into two processing groups, as defined in subparagraph (1) of this paragraph: Group 1 for Emergency Modernization; and Group 2 for Other Modernization. HA developments may be included in both groups and the same development may be in each group. However, the HA is only required to submit one CIAP Application.

(1) *Grouping Modernization Types.*

(i) *Group 1, Emergency Modernization.* Developments having physical conditions of an emergency nature, posing an immediate threat to the health or safety of residents or related to fire safety, and which must be corrected within one year of CIAP funding approval. Funding is limited to physical work items and may not be used for management improvements. Emergency Modernization includes all LBP testing and abatement of units housing children under six years old with elevated blood lead levels (EBLs) and all LBP testing and abatement of HA-owned day care facilities used by children under six years old with EBLs. Group 1 developments are not subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this paragraph or the long-term viability and reasonable cost determination in section V(e).

(ii) *Group 2, Other Modernization.* Developments not having physical conditions of an emergency nature and located in HAs which have demonstrated a capability of carrying out the proposed modernization activities. Other Modernization includes: one or more physical work items, where the Field Office determines that the physical improvements are necessary and sufficient to extend the useful life of the development; and/or one or more development specific or HA-wide management work items (including planning costs); and/or LBP testing, professional risk assessment, interim containment, and abatement. Therefore, eligibility of work under Other Modernization ranges from a single work item to the complete rehabilitation of a development. Refer to section I(b)(1)(i) of this Notice regarding modest amenities and improved design. Group 2 developments are subject to the technical review rating and ranking in subparagraphs (5), (6) and (7) of this

paragraph and the long-term viability and reasonable cost determination in section V(e).

(2) *Assessment of HA's Management Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's management capability. Particular attention shall be given to the adequacy of the HA's maintenance in determining the HA's management capability. This assessment shall be based on the compliance aspects of on-site monitoring, such as audits, reviews or surveys which are currently available within the Field Office, and on the performance review under the Public Housing Management Assessment Program (PHMAP) for PHAs or the Administrative Capability Assessment for IHAs, and other information sources, as follows:

(i) *Public Housing.* A PHA has management capability if it is (A) not designated as Troubled under 24 CFR Part 901, PHMAP, or (B) designated as Troubled, but has a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 or has obtained alternative oversight of its management functions.

(ii) *Indian Housing.* An IHA has management capability if it is (A) not designated as High Risk under § 905.135 or (B) designated as High Risk, but has

a reasonable prospect of acquiring management capability which may include through CIAP-funded management improvements. A High Risk IHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the goals established in its management improvement plan under § 905.135.

(3) *Assessment of HA's Modernization Capability.* As part of its technical review of the CIAP Application, the Field Office shall evaluate the HA's modernization capability, including the progress of previously approved modernization and the status of any outstanding findings from CIAP monitoring visits, as follows:

(i) *Public Housing.* A PHA has modernization capability if it is (A) not designated as Modernization Troubled under 24 CFR Part 901, PHMAP, or (B) designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability which may include through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability

through hiring staff or contracting for assistance.

(ii) *Indian Housing.* An IHA has modernization capability if it is capable of effectively carrying out the proposed modernization improvements. Where an IHA does not have a funded modernization program in progress, the ONAP shall determine whether the IHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

(4) *Technical Processing.* After the Field Office has categorized the eligible HAs and their developments into Group 1 and Group 2, the Field Office shall rate each Group 2 HA on each of the technical review factors in subparagraph (5) of this paragraph. With the exception of the technical review factor of "extent and urgency of need", a Group 2 HA is rated on its overall HA application and not on each development. For the technical review factor of "extent and urgency of need," each development for which funding is requested in the CIAP Application by a Group 2 HA is scored; the development with the highest priority needs is scored the highest number of points, which is then used for the overall HA score on that factor. *High priority needs* are non-emergency needs, but related to: health or safety; vacant, substandard units; structural or system integrity; or compliance with statutory, regulatory or court-ordered deadlines.

(5) *Technical Review Factors.* The technical review factors for assistance are:

Technical review factors	Maximum points
Extent and urgency of need, including need to comply with statutory, regulatory or court-ordered deadlines	40
HA's modernization capability	15
HA's management capability	15
Extent of vacancies, where the vacancies are not due to insufficient demand	10
Degree of resident involvement in HA operations	5
Degree of HA activity in resident initiatives, including tenant opportunity, economic development, and drug elimination efforts	5
Degree of resident employment through direct hiring or contracting or job training initiatives	5
Local government support for proposed modernization	5
Total maximum score	100

(6) *Bonus points.*

(i) For Public Housing only, the Field Office shall provide up to 5 bonus points for any PHA that can demonstrate that it has obtained funds from a non-HUD source to improve or support the modernization activities or the general operation of the PHA. Non-HUD sources of funding may include: local government, over and above what is required under the Cooperation

Agreement for municipal services such as police and fire protection and refuse collection; private non-profit organizations; or other public and private entities. To qualify for the bonus points, the PHA shall identify the entity, the amount of funds being obtained, and the purpose of the funding.

(ii) For Public Housing only, the Field Office shall provide up to 2 bonus points for any PHA that can

demonstrate that it has awarded contracts, including subcontracts, to minority business enterprises (MBEs) or women's business enterprises (WBEs) within the last three years. Such affirmative action is required by Executive Orders 11625 and 12432 for MBEs and by Executive Order 12138 for WBEs. To qualify for the bonus points, the PHA shall identify the contractor or the subcontractor, the dollar value of the

contract or subcontract, and the date of award.

(7) *Rating and Ranking.* After rating all Group 2 HAs on each of the technical review factors and providing any bonus points as set forth in subparagraph (6) of this paragraph, the Field Office shall rank each Group 2 HA based on its total score, list Group 2 HAs in descending order and identify other Group 2 HAs with lower ranking applications, but with high priority needs. The Field Office shall consult with Headquarters regarding any identified FHEO noncompliance.

(d) *Joint Review.* The purpose of the Joint Review is for the Field Office to discuss with the HA the proposed modernization program, as set forth in the CIAP Application, and determine the size of the grant, if any, to be awarded.

(1) The Field Office shall select HAs, including all Group 1 HAs, for Joint Review so that the total dollar value of all proposed modernization recommended for funding exceeds the assignment amount by at least 15%. This will preserve the Field Office's ability to adjust cost estimates and work items as a result of Joint Review.

(2) The Field Office shall notify in writing each HA whose application has been selected for further processing as to whether the Joint Review will be conducted on-site or off-site (e.g., by telephone or in-office meeting). An HA will not be selected for Joint Review if there is a duplication of funding (refer to section V(g)). The Field Office shall notify in writing each HA not selected for Joint Review and the reasons for non-selection.

(3) Where the HA has not included some of its developments in the CIAP Application, the Field Office may not, as a result of Joint Review, consider funding any non-emergency work at excluded developments or subsequently approve use of leftover funds at excluded developments. Therefore, to provide maximum flexibility, the HA may wish to include all of its developments in the CIAP Application, even though there are no known current needs.

(4) The HA shall prepare for the Joint Review by preparing a draft CIAP budget, and reviewing the other items to be covered during the Joint Review, such as the need for professional services, method of accomplishment of physical work (contract or force account labor), HA compliance with various Federal statutes and regulations, etc. If conducted on-site, the Joint Review may include an inspection of the proposed physical work.

(e) *HUD Awards.* After all Joint Reviews are completed, the Field Office shall adjust the HAs, developments, and work items to be funded and the amounts to be awarded, on the basis of information obtained from Joint Reviews, FHEO review, and environmental reviews (refer to paragraph (h)). Such adjustments are necessary where Joint Review determines that actual Group 1 emergencies and Group 2 high priority needs, HA priorities, or cost estimates vary from the HA's application. Such adjustments may preclude the Field Office from funding all of the higher ranked HA applications in order to accommodate the funding of high priority needs. However, where the information obtained from Joint Reviews, FHEO review, and environmental reviews does not substantially alter the information used to establish the rankings before Joint Review, the Field Office shall make funding decisions in accordance with its rankings. After Congressional notifications, the Field Office shall announce the HAs selected for CIAP grants, subject to their submission of an approvable CIAP budget and other required documents.

(f) *HA Submission of Additional Documents.* After Field Office funding decisions, the Field Office shall provide written notification to the HA of funding approval, subject to HA submission of the following documents within the time frame prescribed by the Field Office:

(1) *Form HUD-52825, CIAP Budget/Progress Report*, which includes the implementation schedule(s), in an original and two copies.

(2) *Form HUD-50070, Certification for a Drug-Free Workplace*, in an original only.

(3) *Form HUD-52820, HA Board Resolution Approving CIAP Budget*, in an original only.

(g) *ACC Amendment.* After HUD approval of the CIAP budget, HUD and the HA shall enter into an ACC amendment in order for the HA to obtain modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). HUD has the authority to condition an ACC amendment (e.g., to require an HA to hire a modernization coordinator or contract administrator to administer its modernization program).

(h) *Environmental review.* The Field Office shall review the environmental impact of all modernization activities

under Part 50, in accordance with the provisions of Parts 905 and 968. The Field Office may obtain the information required to conduct the environmental review during Joint Review. The HA shall provide any documentation to the Field Office that it needs to carry out its review under NEPA. After all Joint Reviews are conducted, the Field Office shall complete the environmental reviews before funding decisions are made and announced and before HAs are invited to submit CIAP budgets. Therefore, in requesting CIAP budgets, the Field Office shall specify any HA modification or elimination of activities or expenditures that the Field Office has determined, after review under the National Environmental Policy Act (NEPA) or related laws, to have an unacceptable environmental impact. Upon approval of the CIAP budget, the Field Office shall send an approval letter to the HA which includes notification that HUD has complied with its responsibilities under 24 CFR 905.120(a) or 24 CFR 968.110(c) and (d) before entering into an ACC amendment with the HA.

(i) *Declaration of Trust.* Where the Field Office determines that a Declaration of Trust is not in place or is not current, the HA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the HA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements. HUD has determined that its interest in Mutual Help units is sufficiently protected without the further requirement of a Declaration of Trust; therefore, a Declaration of Trust is not required for Mutual Help units.

(j) *"Fast Tracking" Applications.* Emergency applications do not have to be processed within the normal processing time allowed for other applications. Where an immediate hazard must be addressed, HA applications may be submitted and processed at any time during the year when funds are available. The Field Office shall "fast track" the processing of these emergency applications so that fund reservation may occur as soon as possible.

V. Other Program Items

(a) *Turnkey III Developments.*

(1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items under Emergency Modernization or Other Modernization which are not the responsibility of the homebuyer families and which are related to health

and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, eligible costs include management improvements under the modernization type of Other Modernization. Turnkey III units which have been paid off, but not conveyed, are eligible for funding, but if funded, the modernization work must be completed before conveyance. The cost of the physical and management improvements shall not increase the purchase price and amortization period for the homebuyer families.

(2) *Ineligible Costs.* Nonroutine maintenance or replacements, dwelling additions, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of subparagraph (1) of this paragraph, an HA may carry out Other Modernization in a Turnkey III development, whenever a Turnkey III unit becomes vacant or is occupied by a non-homebuyer family. An HA that intends to use funds under this paragraph must identify in its CIAP Application, the estimated number of units proposed for Other Modernization and subsequent sale. In addition, an HA must certify that: the proposed modernization under this paragraph would result in bringing the identified units into full compliance with the homeownership objectives under the Turnkey III Program; and the HA has homebuyers who both are eligible for homeownership, in accordance with the regulatory requirements, and have demonstrated their intent to be placed into each of the Turnkey III units proposed for Other Modernization.

(ii) Before an HA may be approved for Other Modernization of a unit under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum operating subsidy. Any increase in the value of a unit caused by its Other Modernization under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its purchase price.

(b) *Mutual Help Developments.* Mutual Help developments are eligible for the same physical and management improvement costs as are rental developments. Mutual Help units which have been paid off, but not conveyed, are eligible for funding, but if funded,

the modernization work must be completed before conveyance.

(c) *Professional Risk Assessment for LBP.* A set-aside may be made available for LBP professional risk assessments under a separate NOFA and Processing Notice. HAs with pre-1980 family developments are strongly encouraged to apply for these funds to conduct LBP professional risk assessments.

(d) *In-Place Management (Interim Containment of LBP).* Where the results of the LBP professional risk assessment recommend that the HA undertake in-place management measures, the HA is strongly encouraged to apply for CIAP funds to carry out such measures. However, if the HA is not successful in obtaining CIAP funds for in-place management measures, the HA may request a budget revision of previously approved, but unobligated CIAP funds to accomplish such measures. Where the HA had a CIAP budget revision approved for this purpose in FY 1994, the HA may request FY 1995 CIAP funds to complete the items which were eliminated as a result of the budget revision.

(e) *Long-Term Viability and Reasonable Cost.*

(1) *Long-Term Viability.* On Form HUD-52822, CIAP Application, the HA certifies whether the developments proposed for modernization have long-term viability, including prospects for full occupancy. If, during Joint Review, the HA or Field Office believes that a particular development may not have long-term viability, the Field Office shall make a final viability determination. If the Field Office determines that a development does not have long-term viability, the Field Office shall only approve Emergency Modernization or nonemergency funding necessary to maintain habitability until the demolition or disposition application is approved and residents can be relocated. In making the final viability determination, the Field Office shall consider whether:

(i) Any special or unusual conditions have been adequately explained, all work has been justified as necessary to meet the modernization and energy conservation standards, including development specific work necessary to blend the development in with the design and architecture of the neighborhood; and

(ii) Reasonable cost estimates have been provided, and every effort has been made to reduce costs; and

(iii) Rehabilitation of the existing development is more cost-effective in the long-term than construction or acquisition of replacement housing; or

(iv) There are no practical alternatives for replacement housing.

(2) *Reasonable Cost.* During the Joint Review, the Field Office shall determine reasonable cost for the proposed work, using one of the following methods: (i) unfunded hard cost of 90 percent or less of computed Total Development Cost (TDC), which is easier to apply when comprehensive-type modernization is proposed; or (ii) the reasonableness of the estimated cost of individual work items, using national indices, such as R.S. Means Index, the Dodge Report or Marshall and Swift, adjusted to reflect local conditions and actual experience, which is easier to apply when piecemeal-type modernization is proposed. No computation of the TDC is required where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development.

(f) *Use of Dwelling Units for Economic Self-Sufficiency Services and/or Drug Elimination Activities.* On August 24, 1990, the Department issued HUD Notice PIH 90-39 (PHA), concerning the eligibility for funding under the Performance Funding System of dwelling units used to promote economic self-sufficiency services for residents and anti-drug programs. CIAP funds may be used to convert units for these purposes. Also refer to the Family Self-Sufficiency Program Guidelines (56 FR 49592, September 30, 1991).

(g) *Duplication of Funding.* The HA shall not receive duplicate funding for the same work item or activity under any circumstance and shall establish controls to assure that an activity, program, or project that is funded under any other HUD program, shall not be funded by CIAP.

VI. Application Deadline Date and Summary of FY 1995 CIAP Processing Steps

The deadline date for submission of the FY 1995 CIAP Application will be established in the NOFA to be published at a future date. Dates for other processing steps will be established by each Field Office to reflect local workload issues.

Summary of Processing Steps

1. HA submits CIAP Application.
2. Field Office conducts completeness review and requests corrections to deficient applications.
3. HA submits corrections to deficient applications within 14 calendar days of notification from Field Office.
4. Field Office conducts eligibility review and technical review (rating and ranking) and makes Joint Review selections.

5. Field Office completes Joint Reviews, environmental reviews and FHEO review.

6. Field Office makes funding decisions and forwards Congressional notifications to Headquarters.

7. Congressional notification is completed and Field Office notifies HA of funding decisions.

8. HA submits additional documents as required in section IV(f).

9. Field Office completes fund reservations and forwards ACC amendment to HA for signature and return.

10. Field Office executes ACC amendment and HA begins implementation.

VII. Other Matters

(a) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment will be made in accordance with HUD regulations at 24 CFR Part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) in connection with issuance of the FY 1995 NOFA for this program. The Finding of No Significant Impact will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

(b) *Federalism Impact.* The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

(c) *Impact on the Family.* The General Counsel, as the Designated Official for Executive Order 12606, *The Family*, has determined that this Notice will likely have a beneficial impact on family formation, maintenance and general well-being. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

(d) *Accountability in the Provision of HUD Assistance.* The Department has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR Part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of

assistance administered by the Department. On January 16, 1992, the Department published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under the NOFA to be published as follows:

(1) *Documentation and Public Access.* The Department will ensure that documentation and other information regarding each application submitted pursuant to the NOFA to be published are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. In addition, HUD will include the recipients of assistance pursuant to the NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) *HUD Responsibilities—Disclosures.* The Department will make available to the public for five years all applicant disclosure reports (Form HUD-2880) submitted in connection with the NOFA to be published. Update reports (also Form HUD-2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR Part 15. (See 24 CFR Part 12, Subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) *Prohibition Against Advance Information on Funding Decisions.*

HUD's regulation implementing section 103 of the HUD Reform Act, codified at 24 CFR Part 4, will apply to the funding competition to be announced under the separately published NOFA. The requirements of the rule continue to apply until the

announcement of the selection of successful applicants. Also refer to a final rule amending Part 4 published in the **Federal Register** on November 19, 1993 (58 FR 61016), regarding the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD.

HUD employees involved in the review of applications and in the making of funding decisions are limited by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR Part 4.

Applicants who have questions should contact the HUD Office of Ethics at (202) 708-3815 (voice), (202) 708-1112 (TDD). These are not toll-free numbers. The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Field Office Counsel or Headquarters Counsel for the program to which the question pertains.

(f) *Prohibition Against Lobbying of HUD Personnel.*

Section 112 of the HUD Reform Act added a new section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD regulations implementing section 13 are at 24 CFR Part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the regulation, particularly the examples contained in Appendix A of the rule.

A final rule published in the **Federal Register** on September 7, 1993, amended the definition of "person" to exclude from coverage a State or local government, or the officer or employee of a State or local government or housing finance agency thereof who is engaged in the official business of the State or local government.

Any questions regarding the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (voice); (202) 708-1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD Office.

(g) Prohibition Against Lobbying Activities.

The use of funds awarded under the NOFA to be published is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the HUD implementing regulations at 24 CFR Part 87. These authorities prohibit recipients

of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR Part 87, applicants, recipients and subrecipients of assistance exceeding \$100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

If the amount applied for is greater than \$100,000, the certification is required at the time application for funds is made that federally appropriated funds are not being or have not been used in violation of the Byrd Amendment. If the amount

applied for is greater than \$100,000 and the HA has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR Part 87 (Byrd Amendment), the submission also must include the SF-LLL, Disclosure of Lobbying Activities. The HA determines if the submission of the SF-LLL is applicable.

(h) *Paperwork Reduction Act Statement.* The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1989 (44 U.S.C. 3501-3520) and have been assigned OMB control number 2577-0044.

VIII. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.852.

Dated: January 9, 1995.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

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